

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

\* \* \* \* \*

MICHAEL KOZIARA,

Plaintiff,

Case No. 13-CV-834-JDP

vs.

BNSF RAILWAY COMPANY,

Madison, Wisconsin

March 2, 2015

9:20 a.m.

Defendant.

\* \* \* \* \*

STENOGRAPHIC TRANSCRIPT OF FIRST DAY OF JURY TRIAL

MORNING SESSION

HELD BEFORE THE HONORABLE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

Nichols Kaster, PLLP

BY: JAMES H. KASTER

MATTHEW H. MORGAN

NICHOLAS D. THOMPSON

4600 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402-2242

Also Present: Emilee Howe, Paralegal

For the Defendant:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

BY: BRUCE J. DOUGLAS

COLTON D. LONG

Wells Fargo Center

90 South Seventh Street, Suite 3800

Minneapolis, Minnesota 55402

Also Present: Jennifer Lenander, Legal Assistant

CHERYL A. SEEMAN, RMR, CRR

Federal Court Reporter

120 North Henry Street, Room 520

Madison, Wisconsin 53703

1-608-255-3821

1 APPEARANCES: (Continued)

2 For the Defendant:

3 Jennifer Willingham, Corporate Counsel  
4 Daniel Rankin, Corporate Representative  
5 BNSF Railway Company

6 \*\*\*

7 (Called to order.)

8 THE CLERK: Case No. 13-CV-834, *Michael Koziara*  
9 *v. BNSF Railway Company*, called for jury selection and  
10 trial. May we have the appearances, please?

11 MR. MORGAN: Good morning, Your Honor. Matthew  
12 Morgan and Jim Kaster from Nichols Kaster on behalf of  
13 the plaintiff, Michael Koziara, who's seated at counsel  
14 table with us.

15 THE COURT: Thank you, very much. Good morning  
16 to you.

17 MR. DOUGLAS: Good morning, Your Honor. Bruce  
18 Douglas and Colton Long from the firm of Ogletree Deakins  
19 for the defendant, BNSF Railway Company.

20 THE COURT: Good morning to you. And good  
21 morning to all of you. This case involves the Federal  
22 Railroad Safety Act, a law that prohibits railroads from  
23 retaliating against employees for reporting work-related  
24 injuries.

25 Mr. Koziara claims that he suffered a fracture to  
his leg when he was supervising a crew near La Crosse,

1 Wisconsin. In the course of investigating Mr. Koziara's  
2 injury, BNSF, that's the railroad that employed him, and  
3 the defendant in this case, came to believe that he had  
4 stolen property from the railroad company a week before  
5 his injury. BNSF eventually suspended Mr. Koziara  
6 from -- for his involvement in the accident that led to  
7 his injury and terminated him for his theft. Mr. Koziara  
8 claims that BNSF suspended and then terminated him  
9 because he reported an injury, in violation of the  
10 Federal Railroad Safety Act.

11 We're now going to conduct what's called the *voir*  
12 *dire*, which means that we're going to ask some questions  
13 of you to make sure that you can be fair and impartial if  
14 you were to be chosen as jurors in this case and to help  
15 the parties decide which of you they would like to serve  
16 as the jurors. So we're going to ask you some questions  
17 that you will have to answer and that's going to be  
18 essentially our proceeding.

19 Before we do that, I'm going to ask Mr. Wiseman to  
20 administer an oath so that you answer the questions  
21 honestly. Mr. Wiseman.

22 THE CLERK: Would you please stand and raise  
23 your right hand?

24 **PROSPECTIVE JURORS, SWORN**

25 THE CLERK: Please be seated.

1 THE COURT: Okay. So as I said, we're going to  
2 ask you some questions. And there's a microphone that we  
3 will pass around at certain moments so that we can hear  
4 you clearly. And there are some questions that I ask,  
5 like this first one that I'm going to ask, that if you  
6 have a "yes" answer, there are reasons that you may have  
7 or that we may have for wanting to take your answer over  
8 here at what we call *side bar*. So we'll go over to the  
9 side so that nobody else can hear what your answers are.  
10 And I'll listen and a designee from each side will listen  
11 to your answers over here.

12 So, for example, I'll ask you the first question:  
13 "Have any of you heard of this case before today?" And  
14 if you have, then I'm going to take you over to the side  
15 and find out what it is that you heard, but I don't want  
16 everybody else to hear what you might have heard about  
17 this case if you had heard anything. So I don't think  
18 this is an especially high-profile case, but it's  
19 possible you might have heard it. So anybody heard of  
20 this case before today? Very good.

21 My next question is also an easy one. And this one  
22 you don't have to come over to side bar to answer this  
23 one. But the trial of this case will begin today and it  
24 will probably last the rest of this week and it will  
25 finish on Friday, March 6th. Is there any one of you who

1 would be unable to serve as a juror for the week that  
2 this trial will take? If you have -- and I recognize  
3 that jury service, although it's I think a very rewarding  
4 and interesting experience, it is an imposition on the  
5 rest of your life. So is there anybody who has a  
6 conflict that they just cannot avoid if the case were to  
7 last all week? Very good. Very good.

8 Okay. The next thing I'm going to do is I'm going  
9 to ask that counsel for each side, one at a time, to  
10 stand up and introduce themselves and the parties to this  
11 case to see if any of you in the jury know them. So with  
12 that --

13 MR. MORGAN: Thank you, Your Honor. I'm Matthew  
14 Morgan. This is my partner, James Kaster. We're from a  
15 law firm known as *Nichols Kaster* in Minneapolis,  
16 Minnesota. Seated to Mr. Kaster's right is plaintiff  
17 Mike Koziara. He's the plaintiff in this case. His wife  
18 is in the first row sitting behind us. That's Joan  
19 Koziara. And then also from my office is a paralegal.  
20 Her name is Emilee Howe. She's sitting there. And  
21 Mr. Nicholas Thompson, who's sitting in the first row  
22 behind Ms. Howe.

23 THE COURT: Okay. Does anybody on the jury know  
24 anyone that is affiliated with the plaintiff's side of  
25 the case? Good. Same question now over to the

1 defendant's side of the table for BNSF Railway.

2 MR. DOUGLAS: Thank you. My name is Bruce  
3 Douglas and I'm an attorney with the law firm of Ogletree  
4 Deakins. And I'm from the Minneapolis office, as are  
5 these gentlemen from Minneapolis. With me is my  
6 colleague, Colton Long, an attorney in our office; our  
7 legal assistant, Jennifer Lenander, who will be assisting  
8 us at trial.

9 Also present today is a corporate representative for  
10 BNSF Railway, Daniel Rankin, who is the general -- he's  
11 the manager of the Chicago Division on the maintenance  
12 side, which is the division where Mr. Koziara worked; and  
13 also Jennifer Willingham, who is an attorney in the BNSF  
14 Legal Department, which is headquartered in Fort Worth,  
15 Texas.

16 THE COURT: Do any of you know anyone from the  
17 BNSF side of the case? Okay.

18 I have to ask you the same question with regard to  
19 people who might serve as witnesses here and so I'm going  
20 to go down the list of witnesses that might be presented.  
21 And so I'm going to give you kind of two lists. The  
22 lists might overlap a little bit. Not all of these  
23 witnesses are going to be called, so I don't want you to  
24 think, oh, my goodness, how long is this going to be.  
25 But because the list is sort of long, I'm just going to

1 read the list. And then if you just make a mental note  
2 if anybody on this list is somebody that you know, I'll  
3 find out at the end of the list.

4 Okay. So here, I'm going to read the first list:  
5 Chris Davis, Michael Heille, Joan Koziara, Michael  
6 Koziara, Al Mitchell, Daniel Rankin, Dan Stern, Brad  
7 Underhill, Mike Veitz, Eric Weber, Jerry Weis, Matt Wiens  
8 and Gary Wischover. Any of those names sound familiar to  
9 you? Good.

10 Another list again. The lists are somewhat  
11 overlapping, so you're going to hear some of the same  
12 names: Al Mitchell, Brad Underhill, Craig Morehouse, Dan  
13 Stern, Dane Freshour, Daniel Rankin, David Bruring, Derek  
14 Cargill, Don Jones, Eric Weber, Mark Moody, Michael  
15 Heille, Michael Koziara, Michael Veitz. Any of those  
16 names sound familiar? Very good.

17 Do any of you know me or any of the court personnel?  
18 We have Andrew Wiseman. We have Lynette Swenson -- I'm  
19 sorry, Cheryl Seeman; my law clerk, Trevor Brown. And  
20 that's the court personnel. Yes. Let's see. I'm going  
21 to get used to doing this here, so this is Mr. Cegelski.

22 MR. CEGELSKI: Yes. I know Mr. Wiseman.

23 THE COURT: And how do you know Mr. Wiseman?

24 MR. CEGELSKI: We played soccer together quite a  
25 number of years.

1 THE COURT: All right. And do you feel that  
2 your relationship with Mr. Wiseman would unfairly  
3 influence your decision in this case?

4 MR. CEGELSKI: I do not.

5 THE COURT: Very good. Anyone else?

6 Do any of you know any of the other persons on the  
7 jury panel? Okay. And I remind myself, too, that I want  
8 to address the people in the gallery. It's possible that  
9 one of the people in the current panel would be excused.  
10 And if that's the case, I'm going to ask one of you to  
11 take their place. And if that happens after we've gone  
12 through all of these questions, we're going to have to do  
13 kind of a quick makeup session with the replacement. So  
14 if you would, keep note of the questions that I'm asking  
15 and recognize that I might have to do the speed version  
16 of this with you if you end up back on the panel. All  
17 right.

18 I think each one of you has a little questionnaire.  
19 And this is the point at which we're going to pass the  
20 microphone to you. We'll start with Mr. Bartzen, who is  
21 Juror No. 1. And we'll pass the microphone from person  
22 to person while you tell us a little bit about yourself.

23 MR. BARTZEN: Okay. My name is Jeff Bartzen. I  
24 am 53. I live in McFarland, Wisconsin. We've lived  
25 there since 1999. I'm married with two children, ages 10



1 to 12. I am currently a lawyer. I've practiced in  
2 Madison for about 24 years, mostly corporate and real  
3 estate. I have done a little insurance defense when I  
4 was at Bell Gierhart. My wife is a nurse at the UW  
5 Hospital.

6 No military service. I went through law school here  
7 at UW-Madison. Other than the state bar and the ABA, I  
8 am a member of access -- excuse me, Dane County Public  
9 Affairs, Ethics Committee for the Village of McFarland.  
10 I'm trying to think. A couple others. I'm blanking for  
11 the moment. I have no bumper stickers.

12 Hobbies and leisure time: playing guitar, taking  
13 walks, reading, mostly taking care of my kids really.  
14 Favorite types of reading material, mostly history. I  
15 probably wrote a letter -- this is an interesting  
16 question. I think when Governor Thompson was running for  
17 governor for the first time I worked for him and I think  
18 I wrote a letter to the editor 30 years ago.

19 Favorite types of television shows, history-type  
20 shows and sports. I don't really listen to talk radio or  
21 TV news channels. Internet sites mostly for work, law  
22 related; nonwork-related things like *Craigslist*, *Amazon*,  
23 things like that.

24 THE COURT: Okay. Tell us a little bit more  
25 about your law practice. You said you did mostly

1 corporate and real estate now, but at some point you did  
2 some litigation?

3 MR. BARTZEN: I started my practice in '91  
4 through '93. I was chief counsel to Governor Thompson.  
5 Then I went to private practice at Neider Boucher. It  
6 was Stolper Koritzinsky back then. Mostly real estate  
7 business. Went there to Family Dollar in Charlotte,  
8 worked on my own a little bit and then I got hired at  
9 Bell Gierhart. And while I mostly did the same stuff --  
10 corporate real estate, securities-type stuff -- I did,  
11 you know, get involved in some insurance defense work.  
12 After that I went to --

13 THE COURT: When was that and for how long a  
14 period?

15 MR. BARTZEN: I worked at Bell Gierhart from  
16 2000 to 2005. And of my time there, maybe 3 percent was  
17 in insurance defense. Then I went to Murphy Desmond for  
18 seven years and then I'm back at Neider Boucher.

19 THE COURT: Okay. Very good. And is Jim  
20 Bartzen your brother?

21 MR. BARTZEN: Not related, but somewhere down  
22 the line I'm sure. We've talked about this off and on.

23 THE COURT: Very good. Thank you. Ms. Larson.

24 MS. LARSON: I'm Victoria Larson. I'm 57 years  
25 old and I live in Verona, Wisconsin. I am married. I

1 have three adult children, a son-in-law, three beautiful  
2 grandchildren. I am currently an elementary school  
3 teacher/librarian. Let's see. What else? I've never  
4 been in the military. I have a bachelor's degree plus  
5 many other credits after that. I belong to the American  
6 Library Association. I have no bumper stickers.

7 My hobbies include cooking, sewing, reading, playing  
8 with the grandchildren. I have never written a letter to  
9 the editor. I don't watch a lot of TV. If I do, it's  
10 the Hallmark station or adventure stories, like, that  
11 take place in Alaska.

12 I don't have my glasses on.

13 I don't listen to much radio. And I use the  
14 Internet for looking up information about children's  
15 literature, using *Amazon* and that's about it.

16 THE COURT: Okay. Very good. Thank you,  
17 Ms. Larson. Ms. Pritchett.

18 MS. PRITCHETT: My name is Joann Pritchett. I  
19 live in Madison. I've lived in Madison since 1976,  
20 August. Not married, just me and my dog.

21 THE COURT: What kind of dog?

22 MS. PRITCHETT: He's a Yorkshire terrier. His  
23 name is Brady Paul Michael Ryan Pritchett. I am retired.  
24 You will get there one day. I highly recommend it. I  
25 was formerly the assistant dean at the UW-Madison School

1 of Pharmacy. No adult children. Like I said, just me  
2 and my dog. Military service, I was asked to work with  
3 the Cuban boat-lift people over at Fort McCoy at one  
4 time. I have a PHD degree in health and educational  
5 policy studies, including a degree in nursing.

6 Membership and organizations, I am currently a  
7 member of the African American Health Network as well as  
8 black -- the Foundation for Black Women's Wellness and  
9 the Charles Hamilton Houston Institute, which deals  
10 primarily with education for youth.

11 No bumper stickers on my car. Hobbies, I enjoy  
12 woodworking. I build birdhouses out of scrap cedar wood  
13 for fences. I do Nordic walking, I'm into gardening and  
14 I love making cheesecakes. I like to read bios,  
15 especially if it involves climbing Mt. Everest, K2 and  
16 other mountains.

17 I have written many letters to the editor regarding  
18 equality in terms of the reporting of women's sports. I  
19 enjoy watching *Criminal Minds* as well as CSI-type  
20 programs. I listen to *A Prairie Home Companion* 99  
21 percent of the time on Saturdays, so don't call me at  
22 five o'clock. And I use the Internet primarily for  
23 *Amazon* and stuff related to gardening, stuff like that.

24 THE COURT: Very good. Thank you. I think  
25 we'll get you home in time to watch *A Prairie Home*

1 Companion. Sorry we didn't draw you in a patent case.

2 Mr. Castillo.

3 MR. CASTILLO: Hi. My name is David Castillo.

4 I'm from the Madison area. I've lived here about three

5 years. I'm married, have a three-year-old boy. Current

6 producer, I actually am producer/director for Food

7 Network TLC. I also -- my spouse is a teacher here in

8 Madison.

9 THE COURT: Where does your spouse teach?

10 MR. CASTILLO: Wingra. She teaches Spanish.

11 THE COURT: And what level?

12 MR. CASTILLO: She teaches I believe second

13 grade.

14 THE COURT: Okay. Good.

15 MR. CASTILLO: Organizations and groups. I

16 don't have any bumper stickers. I actually have an

17 entertainment media business degree here from Madison. I

18 don't do much reading. I have the Internet to do that.

19 I haven't written anything for a while. I also do --

20 favorite types of television shows, I don't have time for

21 those. But whenever I do get a chance, I watch some *Cake*

22 *Boss* on TLC.

23 THE COURT: Is that a program that you work on?

24 MR. CASTILLO: No, I don't work on that program.

25 I actually work for on *Mexican Made Easy* with Marcela and

1 one other thing. I think it's called -- what's the name  
2 of that program? And I have worked on *The Chew*. And I'm  
3 trying to think of another one. I think that's about it  
4 right now.

5 For the Internet it's basically just on *Linda.com*,  
6 just keeping learning on different types of production  
7 work. Other than that, that's pretty much it.

8 THE COURT: Very good. Thank you. Ms. Beth.

9 MS. BETH: My name is Deborah Beth. I'm 46  
10 years old. Actually, 23 twice, we just say it that way.

11 THE COURT: I understand.

12 MS. BETH: Don't live in Madison. I'm from  
13 Janesville, Wisconsin. I married a year ago. For our  
14 seven-year itch we got hitched. We're going to reverse  
15 karma. We each have three children. Occupation, I do  
16 catering for Panera Bread. We just transferred to  
17 Janesville. I miss Madison massively. Janesville is not  
18 Madison.

19 My husband is a welder. He's a welder for Hufcor.  
20 He's been building retractable walls for 26 years. We  
21 have three adult children, two grandchildren. My son is  
22 in his second year at Whitewater and said he wants to  
23 work in the Middle East, be an ambassador for the Middle  
24 East. I said, "No, not so much, not so much." But he's  
25 drawn.

1           No military. For schooling I am certified in all  
2 kinds of things. I'm a certified goldsmith. I'm a  
3 licensed radio announcer. Just done a bunch of different  
4 things. Organizations, not so much. Bumper stickers,  
5 no. Hobbies, I have a puppy. So my hobby is sleep, wear  
6 her out and sleep.

7           THE COURT: What kind of dog?

8           MS. BETH: She's a black lab. And I've never  
9 had a lab and she's so happy, happy all the time, happy.  
10 So I'm kind of enjoying this week off actually.

11          THE COURT: Glad we could help out.

12          MS. BETH: Types of reading, I like  
13 metaphysical. Letters to the newspaper, no. Types  
14 television shows, I like the *Property Brothers* and *Love*  
15 *It or List It* and that kind of stuff. It's kind of neat.  
16 I don't really listen to any talk, on, the radio. That's  
17 why I have preset and I just, when the song ends and they  
18 start talking, I can skip over it.

19          Internet I can't stand. I have children who will do  
20 that for me. I know how to check a horoscope once a  
21 month. That's what I use it for. And that's about it.

22          THE COURT: Thank you, very much. Mr. Fronek.

23          MR. FRONEK: Fronek, yes. My name is Rich  
24 Fronek. I'm 60 years old. I live in Lake Mills,  
25 Wisconsin for the last two years. Prior to that about 25

1 years in Fitchburg. I am married. I have two adult  
2 children. I am currently a product manager for a  
3 diagnostic ECG device company called Mortara Instruments  
4 in Milwaukee, Wisconsin. My wife is a senior fitness  
5 instructor working with senior citizens at the Fitchburg  
6 Senior Center. I have two adult children. My daughter  
7 is a senior producer in a digital studio in New York City  
8 and my son is a general manager of a bar and restaurant  
9 in downtown Milwaukee.

10 I have never served in the military. I did go to  
11 school at UW-Madison and received a master's degree in  
12 biomedical engineering. I'm currently a member of the  
13 Madison History Roundtable and have held past leadership  
14 positions in that group. I don't have bumper stickers on  
15 my car.

16 For hobbies and leisure activities I enjoy biking,  
17 skiing. I also like playing piano and singing. Favorite  
18 types of reading material, typically I'm kind of a Civil  
19 War history buff, so I kind of like history, especially  
20 American history. I've never written a letter to the  
21 editor.

22 Favorite types of TV shows, you know, I enjoy  
23 sports, so ESPN seems to be a favorite. I also like  
24 documentaries and anything that might have to do with  
25 history. I do actually regularly listen to -- it's



1 actually sports talk radio. I have a long commute to  
2 Milwaukee sometimes, so it kind of fills the time pretty  
3 well. I also listen to, you know, public radio as well.  
4 And I do use the Internet occasionally, mostly just for  
5 browsing about sports, weather, things of that nature.

6 THE COURT: Good. So you moved to Lake Mills  
7 because of the commute over to Milwaukee?

8 MR. FRONEK: It cut it about in half, yeah. And  
9 both of my kids were in Milwaukee at the time, so it made  
10 sense to do that.

11 THE COURT: Good. Thank you. Ms. Burmeister.  
12 Did I pronounce it right?

13 MS. BURMEISTER: Yes, Burmeister. Fay  
14 Burmeister. I'm 66. I live in the Village of Wyocena,  
15 which is a small, little village near Portage. I am  
16 married.

17 THE COURT: You probably have to tell them where  
18 Portage is.

19 MS. BURMEISTER: It's about 30 miles north of  
20 Madison.

21 THE COURT: All right. Thank you.

22 MS. BURMEISTER: I am married and we have three  
23 children. I'm currently semi retired from the Miller &  
24 Miller law firm in Portage. I was the business manager.  
25 I still do payroll and probate and trust tax returns.

1 Basically that's -- I did all the accounting and the  
2 probate and trust accounting work.

3 THE COURT: And tell us a little bit about  
4 Miller & Miller. What kind of work do they do? Do they  
5 do litigation at all?

6 MS. BURMEISTER: Very very little and normally  
7 it's real estate litigation.

8 THE COURT: Okay.

9 MS. BURMEISTER: My spouse has been retired a  
10 little over three years. He was the Director of  
11 Buildings and Grounds at the Pardeeville School District.  
12 Our children are all adults. Our oldest daughter is --  
13 works at the Public Library in McFarland and at  
14 Intermediate School Library. Our oldest son is a lead  
15 operator at a manufacturing firm in Portage,  
16 Saint-Gobain. And our youngest son is a union  
17 electrician for H&H Electric here in Madison.

18 Never served in the military. I do have a  
19 bachelor's degree in applied math from UW-Madison. I  
20 belong to -- I belong to a lot of organizations. I'm  
21 currently the treasurer of the Portage Kiwanis Group.  
22 And for the Wisconsin-Upper Michigan Kiwanis District,  
23 I'm the Builders Club Administrator, which is a service  
24 leadership club for middle school students. I'm also the  
25 treasurer for Friends of the Wyocena Public Library and

1 organist and several other positions in our church.

2 I have no bumper stickers. For hobbies we do  
3 bicycling, gardening, camping, some fishing, lots of  
4 outdoor things. For reading, I'd like to read more, but  
5 mainly when I get done it's the newspaper and the Bible.  
6 I've never written a letter to the editor.

7 My favorite types of television shows are network  
8 news shows and comedies and I like the *CSI*-type shows. I  
9 do not listen regularly to talk radio or watch cable  
10 television except my husband does watch *Fox News* and *CNN*,  
11 so it's on at times when I'm home.

12 I use the Internet a lot for the groups that I'm in  
13 so that Kiwanis has told me I had to be on Facebook. But  
14 I have, like, nine friends. It's mainly for Kiwanis and  
15 my need kids -- well, two of my kids. My youngest won't  
16 let me be a friend.

17 THE COURT: We'll follow up with that.

18 MS. BURMEISTER: I do use *Amazon* and other,  
19 like, *Kohl's* and shopping sites, but basically it's for  
20 e-mail. So I guess that's it.

21 THE COURT: Thank you, very much. Well, you  
22 have a busy semi retirement. Mr. Rajani.

23 MR. RAJANI: Yes. My name is Hasmuk Rajani. 57  
24 years of age. And I live in the City of Madison. I have  
25 been here since 1980. I am married with two kids. My

1 current occupation, I work at the University of  
2 Wisconsin-Madison here. My wife basically does some  
3 child care at home and also she works at a health club  
4 doing the same thing on a part-time basis. I have two  
5 kids. One just graduated last year and she just started  
6 working for the University and the other one is a senior  
7 at college.

8 I do not have any military service. I graduated  
9 with a degree in business at the University of  
10 Wisconsin-Madison. I do not belong to any organizations.  
11 I do not have any bumper stickers. And hobbies and  
12 leisure: soccer, soccer and soccer. I play. I referee.  
13 I coach. And when I'm not doing that, I'm watching a lot  
14 of football on TV; soccer, that is.

15 Favorite types of reading materials, just basically  
16 anything, you know, like *Time Magazine*; magazines that  
17 are related to, like, you know, different parts of the  
18 world that kind of tie in with history and stuff. I'm  
19 into that. I've never written a letter to an editor.

20 My favorite types of television shows, basically  
21 like documentaries and sports. I do watch television,  
22 some ethnic channels here and there, and also watch a lot  
23 of documentary and news-related stuff like CNN, PBS. I  
24 use the Internet mostly for e-mail and for work-related  
25 stuff.

1 THE COURT: Very good. And I don't think you  
2 told us what you did for the University. What's your  
3 job?

4 MR. RAJANI: I work as a grants accountant.

5 THE COURT: Very good. Okay. I'm going to have  
6 you pass the microphone down to Mr. Viken, who's front  
7 row way on the other side. Did I get it right, Viken?

8 MR. VIKEN: No, Viken.

9 THE COURT: Viken.

10 MR. VIKEN: It's Norwegian.

11 THE COURT: I'm sorry.

12 MR. VIKEN: Hi. My name is Bill Viken. I live  
13 in the town of -- actually, between Marshall and Cottage  
14 Grove. I've lived in this area pretty much since 1964.

15 THE COURT: What happened in 1964 to bring you  
16 to Madison?

17 MR. VIKEN: I was born. Oh, yeah, and I'm 50  
18 years old, by the way. My current occupation is I'm a  
19 mechanical engineer for Webcrafters here in Madison. My  
20 wife is an IT buyer for DOT. Oh, yes I am married. I  
21 forgot this one. I have two children and one  
22 grandchildren. And, yes, I'm a former Marine. I was  
23 discharged in 1988. I went to school at MATC for, oh,  
24 one year and then decided that I wanted to do something  
25 else, so I joined the Marine Corps.

1 THE COURT: Good. Well, thanks for your  
2 service.

3 MR. VIKEN: Thank you. I'm really not any  
4 members of no organizations. Work keeps me pretty busy.  
5 I don't have any bumper stickers. Hobbies and leisure,  
6 my father-in-law owns a 400-acre dairy farm, so that kind  
7 of keeps me busy on the side.

8 THE COURT: If you call that leisure.

9 MR. VIKEN: That's not really leisure, no.  
10 Favorite types of reading material, history. I like to  
11 read history. I've never wrote a letter to the editor.  
12 Television shows: sports, history. I do DVR *Matlock*, so  
13 that's something.

14 THE COURT: You're really up on the current  
15 programming.

16 MR. VIKEN: Yeah, yeah. I'm just getting into  
17 the '88 ones now, you know. I listen to news in the  
18 morning. That's about it on the radio. And I really  
19 don't use the Internet for much. I pay bills. I guess  
20 other than that, that's about it.

21 THE COURT: Good. Thank you.

22 MR. VIKEN: Yep.

23 THE COURT: Mr., is it, Thruman?

24 MR. THRUMAN: It's *Thruman*. The H is silent.

25 THE COURT: Okay.

1 MR. THRUMAN: My name is Barry Thruman. I'm 58  
2 years old. I reside in Stoughton, Wisconsin. Divorced  
3 with a girlfriend. Current occupation, I am head  
4 building custodian at East High School for the Madison  
5 School System. Two adult children, 21 and 19. The  
6 oldest works at Culver's. The youngest is going to  
7 school at MATC. No military service. Just have a high  
8 school education, nothing past high school.

9 I don't belong to any memberships or groups. I  
10 don't have any bumper stickers. Hobbies are fishing,  
11 watching sports. I don't really do a lot of reading  
12 other than reading the newspaper and the sports page.  
13 I've never written a letter to a newspaper or magazine.

14 Favorite shows are of course sports. I watch  
15 *American Idol*, *Pawn Stars*, other shows on the History  
16 Channel, some cooking shows. That's about it. I don't  
17 listen to talk radio. The only thing I use the Internet  
18 for is paying bills, the Weather Channel, Googling  
19 something. That's about it.

20 THE COURT: Very good. Thank you.  
21 Mr. Cegelski.

22 MR. CEGELSKI: My name is Todd Cegelski. I'm 52  
23 years old. I live in the City of Verona. I'm married  
24 with three children. My current occupation is I'm a  
25 senior vice president at Johnson Bank in Madison. I run

1 the commercial real estate group. My wife's former  
2 occupation, she's a former teacher for Verona School  
3 District. I have two adult children. My oldest son is a  
4 manager the Copps Grocery Store in Middleton and my  
5 middle son is a junior at UW-Eau Claire.

6 I have no military service. I have a bachelor's  
7 degree with a double major in finance and management from  
8 the University of Wisconsin. I'm in two organizations  
9 that are work related: Downtown Madison, Inc. and the  
10 Apartment Association of South Central Wisconsin.

11 No bumper stickers. Hobbies and leisure: camping,  
12 golf and travel. Favorite types of reading material are  
13 murder-mystery-type books. Have you ever written a  
14 letter to the editor? No. Favorite types of television  
15 shows, I'm kind of a Netflix binge-watcher. *Breaking*  
16 *Bad*. Watching *Mad Men* now. Got to catch up on House of  
17 Cards as soon as I get done with *Mad Men*.

18 Talk radio, I listen to mostly sports then years  
19 radio. I don't listen to any of the other ones. Use the  
20 Internet for reading newspapers: *Madison.com*,  
21 *JournalSentinal.com*. Other sites are mostly to buy  
22 things on the Internet.

23 THE COURT: Okay. Thank you. Mr. Medley.

24 MR. MEDLEY: Hello. I'm Peter Medley. I'm age  
25 61. I live in Madison. I've lived here for about 30



1 years. I am married. No children. I work -- I work for  
2 the State of Wisconsin. I work for the Insurance  
3 Commissioner's Office. I'm, like, a supervisor in our  
4 Financial Bureau. Let's see. My wife is a -- had been a  
5 teacher for 20 years. She is retired now. No children.  
6 No military service.

7 I have a bachelor's from UW-Madison, an MBA from  
8 UW-Milwaukee. I'm a CPA, so I'm a member of, like, the  
9 state and national CPA societies and I'm a member of the  
10 Society of Financial Examiners, is what I do at work.  
11 It's a special trade group for insurance examiner  
12 regulators. I don't have leadership positions in any of  
13 those groups.

14 And I'm in a choir in the Madison area one night a  
15 week. No bumper stickers on my car. For hobbies and  
16 leisure it would be, like, in the summer going camping  
17 and traveling and photography. Favorite types of reading  
18 material, again kind of mystery stories, detective  
19 stories. I haven't written a letter to the editor.

20 Television shows, I watch sports. I watch the  
21 *Turner Classic Movies*. I watch old movies without  
22 commercials. And I guess we've been watching the *Big*  
23 *Bang Theory* reruns on cable. I don't regularly listen to  
24 then years radio or cable TV news channels.

25 At work I use the Internet to keep up with, you

1 know, business and insurance news about the companies  
2 that we regulate. And then at home I mainly use it for  
3 reading news and just following up on interesting  
4 business or science articles or whatever.

5 I guess that hopefully answers all the questions.

6 THE COURT: Thank you, very much. Oh, one  
7 follow-up. You said your wife was a teacher. Where does  
8 she teach?

9 MR. MEDLEY: Well, she's a special education  
10 teacher retired from Middleton. She taught in Mount  
11 Horeb and Sun Prairie and then Middleton.

12 THE COURT: Special ed?

13 MR. MEDLEY: Special ed, yeah.

14 THE COURT: Ms. Thompson.

15 MR. THOMPSON: Hi. My name is Tracy Thompson.  
16 I'm 52 years old. I live in Janesville, Wisconsin. I'm  
17 married. I have two adult sons. One is a freshman at  
18 Madison and the other is a junior at Ripon College. I  
19 currently help take care of my mother-in-law, who is  
20 legally blind, and my elderly parents. My husband works  
21 for General Motors in Chicago. I have never been in the  
22 military. I went to -- graduated from high school. Went  
23 to tech school for a while.

24 Membership of the athletic club. No bumper  
25 stickers. Hobbies: camping, biking, rollerblading. I

1 like to work out and stuff. Favorite types of reading  
2 materials, basically the newspaper. I have never written  
3 a letter to the editor. Favorite types of TV shows, I  
4 like a lot of different TV shows: *American Idol*, *The*  
5 *Boys*. Then years radio: Clark Howard, Dave Ramsey; the  
6 Janesville local then years radio, WCLO. And I really  
7 don't use the Internet much.

8 THE COURT: Thank you, very much.

9 Mr. Hernandez.

10 MR. HERNANDEZ: Good morning. My name is Shaun  
11 Hernandez. I'm 28 years old. I live in Madison. I've  
12 been a resident since 2004. I am married. I work for  
13 the University of Wisconsin Medical Foundation Department  
14 of Surgery as a manager. My wife is a lecturer at the  
15 University of Wisconsin. No children.

16 No military service. I have a master's degree in  
17 public policy from UW-Madison. A member of the  
18 Association of Academic Surgical Administrators. I'm on  
19 the board of directors for that as well as the American  
20 College of Health Care Executives. I have a Bucky Badger  
21 bumper sticker on my car.

22 THE COURT: Good for you.

23 MR. HERNANDEZ: Hobbies and leisure, mostly  
24 running and yoga. Nonfiction reading material. Wrote a  
25 letter once in high school to the editor. We're

1 currently watching, let's see, *Sons of Anarchy*, *Downtown*  
2 *Abbey*. And I watch *Rick Stein* every night. I listen to  
3 NPR mostly on the way home from work. And I use the  
4 Internet mostly for work-related, market research, types  
5 of things like that.

6 THE COURT: All right. And tell us what the  
7 letter you wrote to the editor was.

8 MR. HERNANDEZ: It was regarding requirements  
9 for valedictorian for our high school. My wife was  
10 valedictorian.

11 THE COURT: Thank you, very much. Okay. I have  
12 some questions. And you don't need to stand up for these  
13 questions, but we will pass the microphone to you if you  
14 raise your hand. So basically I'm going to ask  
15 questions -- some questions that are more specific to  
16 this case. These are the kind of thing if you have a  
17 "yes" answer, you'll raise your hand and then we'll  
18 follow up and get the details.

19 So have any of you or a close friend or family  
20 member ever been injured while at work? Raise your hand  
21 if you or a close friend or family member have been  
22 injured at work. Okay. We've got a couple -- three  
23 yes's. And we're going to do this -- it makes it easier  
24 for me to keep track if we do it in order. So this will  
25 be Ms. Burmeister.

1 MS. BURMEISTER: My husband, before he worked  
2 for the school, worked at a sand plant. It was Martin  
3 Marietta and Unimin. And he did hit his head on a  
4 conveyor belt, but there was no serious -- he had to  
5 report it, but there was no serious damage.

6 THE COURT: And did he receive compensation for  
7 his injuries?

8 MS. BURMEISTER: No.

9 THE COURT: Did he suffer any long-term effects?

10 MS. BURMEISTER: Well --

11 THE COURT: That's a matter of opinion.

12 MS. BURMEISTER: Yeah. He's 66 years old, so --

13 THE COURT: All right. Thank you. And then I  
14 think we have Mr. Viken and Mr. Thruman. You can stay  
15 seated. Make yourself comfortable.

16 MR. VIKEN: Thank you.

17 THE COURT: Use the microphone though.

18 MR. VIKEN: 19 -- I'm trying to remember now.  
19 Would have been 1990 I was removing some parts from a  
20 press and it slipped out and I ended up having two back  
21 surgeries. Was off work for 11 months.

22 THE COURT: Okay. And was that a workers'  
23 compensation --

24 MR. VIKEN: Yes, it was.

25 THE COURT: -- issue? Okay. And so you got

1 compensation for your injury?

2 MR. VIKEN: For being -- what do you mean?

3 THE COURT: Well, you got your medical expenses  
4 paid and then you got --

5 MR. VIKEN: Yes

6 THE COURT: -- some time off work?

7 MR. VIKEN: Well, I was off work, yeah, for 11  
8 months with the two surgeries and rehab.

9 THE COURT: All right. Mr. Thruman.

10 MR. THRUMAN: Well, it's kind of a long story,  
11 but back when I first started working with the district I  
12 did injure a shoulder. It was within the first year that  
13 I was working with the district, would have been probably  
14 '91 to '92.

15 THE COURT: That's the school district of  
16 Madison you're talking about?

17 MR. THRUMAN: Right. And over the years I --  
18 you know, I filled out an accident report and had an MRI.  
19 They couldn't find anything. Had an arthrogram they,  
20 couldn't find anything. Over the years I kept having  
21 problems with that shoulder. And I started favoring that  
22 shoulder, so the pain would alternate between both  
23 shoulders. One would bother me for three months.

24 Well, like, two years ago I ended up having both  
25 surgeries three months apart on both shoulders. And so I

1 suppose I could have really went back and said that this  
2 was original injury, but I didn't treat it as workman's  
3 comp. I didn't want to deal with it. So I just had to  
4 use sick time, 55 days, you know, until I got on  
5 long-term disability. But, anyway, the shoulders are  
6 better than they ever were.

7 And then I recently injured a wrist, a tendon, and I  
8 reported that. That was workman's comp. But so far all  
9 I've had is a cortisone injection and that's been seeming  
10 to help so far.

11 THE COURT: Very good. Okay. Thank you.

12 MR. MORGAN: Your Honor, I think we may have had  
13 one other person.

14 THE COURT: Oh. Go ahead. This is Mr. Medley?

15 MR. MEDLEY: Yes, sir. I had a workers' comp  
16 about 40 years. I was in my young 20s. I worked at a  
17 factory in Milwaukee on a punch press line and I injured  
18 a finger. This is where heavy pieces of metal come down  
19 the line. You grab a piece metal, put it on the machine,  
20 you know, punch it, pull it off. I smashed a finger  
21 grabbing a piece of metal, so I -- I was out of work for  
22 a week or two and got a -- it was a long time ago. I've  
23 forgotten some of the -- but, yeah, I did get some loss  
24 of pay and some medicals. But it was a pretty minor  
25 injury, but it was many years ago.

1 THE COURT: Good. Was there anybody else with a  
2 workplace injury? Good.

3 Then the next question is, have you ever directly or  
4 indirectly supervised employees. And I can tell from  
5 your earlier answers I must have some yes's to this. So  
6 the question is, have you supervised employees. And if  
7 the answer is "yes," we're going to follow up and kind of  
8 find out about your supervision. So I expect to have a  
9 lot of these, so let's just go all the way back to  
10 Mr. Bartzen here, Juror No. 1, and then we'll just go  
11 right down the line.

12 And I'm going to guide you a little bit because what  
13 we're really looking for is whether you have hiring and  
14 firing responsibilities and particularly whether you were  
15 responsible for investigating any workplace complaints.  
16 So with that, Mr. Bartzen.

17 MR. BARTZEN: My experience is very limited. It  
18 would be in the form of supervisory capacity over one  
19 legal assistant at various jobs, hiring and firing  
20 ability. Never had to investigate anything.

21 THE COURT: Okay. Very good.

22 MS. PRITCHETT: As the head nurse in the  
23 recovery room at NYU in New York I supervised employees,  
24 especially in the recovery room. I had hiring and firing  
25 responsibilities and I did fire one person because of



1 drugs.

2 THE COURT: Okay. And did you have  
3 responsibilities for investigating workplace complaints?

4 MS. PRITCHETT: Yes.

5 THE COURT: Okay.

6 MS. BETH: I've trained, just on the Madison  
7 east side alone for Panera, I've probably trained and  
8 supervised 500, 600 kids teaching them work ethics and  
9 follow-through and rules and safety and like that.  
10 Hiring and firing, that was never directly my  
11 responsibility, but my opinion is respected.

12 THE COURT: And just for the record, that's  
13 Ms. Beth?

14 MS. BETH: Yes.

15 THE COURT: Thank you. Okay.

16 MR. FRONEK: My name is Rich Fronek. For the  
17 better part of my career as a project manager at an  
18 engineering company, leading up engineering projects and  
19 I did have hiring and firing responsibilities.

20 There is two different types of situations where one  
21 of my employees that reported to me felt unsafe in the  
22 workplace because one of the other members of the project  
23 team, in conversation, said something to the effect that  
24 they thought they were going to "go postal." The other  
25 employee -- I mean, it wasn't meant in -- I wasn't there

1 present at that conversation, but the employee did report  
2 through the normal channels of the business; you know,  
3 through the HR department; that they felt unsafe. So I  
4 was involved in that type of situation and that was  
5 remedied without incident.

6 And then the other case was where I had went through  
7 an interview process. We had a couple of candidates that  
8 applied for a position and I was the main person  
9 responsible for hiring the person and I went and hired a  
10 person. And there was an audit of the business, I think  
11 it was, like, the Equal Opportunity organization that  
12 come in and done an audit on the hiring and was kind of  
13 questioning why I hadn't hired a female for that  
14 position.

15 But again, after, you know, presenting my case and  
16 based on the evidence of what I felt that there was no  
17 further claims or anything of that nature.

18 THE COURT: Okay. Good. Thank you.

19 MS. BURMEISTER: I worked for several years as  
20 the village clerk-treasurer and I was responsible for the  
21 election workers then and hired them, but there was never  
22 any litigation with them or problems. And I sort of  
23 indirectly supervised people at the law firm to help them  
24 with their billing software, but never hired or fired  
25 any. And there were no workplace litigation.

1 THE COURT: Okay. And that's Ms. Burmeister.  
2 Mr. Rajani.

3 MR. RAJANI: I forgot to mention this  
4 previously, but I also work at the Madison Overture  
5 Center, which is right across the road. And for a little  
6 while there I had a stint when I was working as the  
7 manager. And I hired ushers who worked at the theater on  
8 a part-time basis. So I did that for about ten years.  
9 But I stepped down working because that job turned full  
10 time. But I'm still working there as a manager, but I'm  
11 not currently hiring. But I did that for a little while,  
12 for about eight, ten years.

13 THE COURT: Okay. Thank you. So let's pass  
14 that down to Mr. Viken.

15 MR. VIKEN: Yeah. I hire, and not on the firing  
16 end so much as for -- like, the HR kind of goes through  
17 that. But on the hiring end for the engineering  
18 department, I do that. I guess we've never really had  
19 any bad -- I've never had to fire anybody, so been pretty  
20 lucky.

21 THE COURT: Okay. And do you have  
22 responsibility for investigating complaints in the  
23 workplace?

24 MR. VIKEN: Yes, I do.

25 THE COURT: All right.

1 MR. THRUMAN: Well, I do supervise currently at  
2 my position at Building Custodian 3 at East High School.  
3 Before that I was Building Custodian 3 at West High  
4 School. Before that it was Building Custodian at  
5 Hamilton Van Nuys, a combination school, but I'm not  
6 responsible for hiring and firing.

7 I am in charge -- well, you know, if there's a  
8 problem employee, you know, I would, what you call, *write*  
9 *them up* and report that to Building Services. Like I  
10 said, I don't actually do the hiring or firing.

11 THE COURT: Okay. Very good. And that was  
12 Mr. Thruman. Okay. Mr. Cegelski.

13 MR. CEGELSKI: Okay. I've had about four  
14 different positions over a period of 15 years, including  
15 my current position where I have managed people. And I  
16 have, in all those positions, I have had hiring and  
17 firing responsibilities. And I am responsible in my  
18 current position for investigating workplace complaints  
19 from my employees.

20 THE COURT: Okay. Very good.

21 MR. MEDLEY: Thank you. Yes. I'm a supervisor  
22 in my current job. Again, I work for the state. It's a  
23 civil service process. I have been a supervisor for  
24 about 25 years. And I have certainly hired dozens of  
25 people over that time, you know, been on -- our bureau

1 has hired, you know, 50 or a hundred people and I've been  
2 on most of those interviews. And I would have, you know,  
3 had my own. But I usually had about seven or eight  
4 employees that I supervised.

5 Many years ago I was a manager at the Milwaukee  
6 YMCA. We had a problem with theft by the cleaning crew,  
7 the nighttime cleaning crew. And one night I overheard  
8 two custodians talking in a closet in a closed room  
9 about how -- the one telling the other about how he  
10 performed his thefts, and so I fired that person on the  
11 spot.

12 In the civil service job that I have now I did fire  
13 one person; got another person to leave, like, one day  
14 before the hearing on their performance. But these were  
15 kind of performance-related issues where you document the  
16 quality of performance over a long period of time.  
17 Because it's civil service, you know, the state has a lot  
18 of supervisory control and review over any, you know,  
19 supervisor's action.

20 THE COURT: Okay. Very good. And that was --  
21 that's Mr. Medley.

22 MR. MEDLEY: Yes.

23 THE COURT: Mr. Hernandez.

24 MR. HERNANDEZ: Yes. I currently supervise one  
25 employee, was part of the team that hired her. And I

1 guess in theory I'm responsible for firing, but haven't  
2 had to fire yet.

3 THE COURT: Very good. All right. Thank you.  
4 Then the next question is -- and here's how we're going  
5 to handle this one because I'm sure we're going to get a  
6 lot of yes's on this one, too: First of all, let's find  
7 out -- just raise your -- if your employer has a policy  
8 regarding workplace injuries, such as you must to report  
9 them within a certain period of time or you must report  
10 them at all, or whatever. So raise your hand if it has a  
11 policy regarding workplace injuries. Okay. And just for  
12 the record, keep your hands up so we can make a record  
13 here.

14 So that's Mr. Bartzen says "yes," Ms. Larson,  
15 Ms. Pritchett, Ms. Beth, Mr. Fronek, Ms. Burmeister,  
16 Mr. Rajani, Mr. Viken, Mr. Thruman, Mr. Cegelski.  
17 Mr. Medley and Mr. Hernandez.

18 Okay. So I'm going to follow up a little bit. I'm  
19 going to start with the assumption that the workplace --  
20 the policy requires you to report workplace injuries. So  
21 is there anyone who said "yes" to the question about  
22 whether there was a policy and that policy does not  
23 include the requirement that you report the injury?  
24 Okay. Good. All right. That's a good start for a  
25 workplace injury policy.

1           Let's find out a little bit more about the policy.  
2       So if you have -- if you're aware of your workplace  
3       policy and it's more than the requirement that you report  
4       workplace injuries, I'd like to find out a little bit  
5       more about it. So if you have more to add other than  
6       there's a requirement that you timely report workplace  
7       injuries, raise your hand if you have further  
8       elaboration. Okay. All right. Good.

9           Do any of you have responsibility for implementing  
10       your employer's policy regarding workplace injuries? Is  
11       that part of your job to implement the policy on  
12       workplace injuries? Okay. Have one hand from Mr. Medley  
13       and Ms. Pritchett.

14           MS. PRITCHETT: Quick question. I'm retired.

15           THE COURT: Yes. My questions would pertain to  
16       your past work.

17           MS. PRITCHETT: Yes.

18           THE COURT: Go ahead, Mr. Medley, as long as  
19       you've got the mike.

20           MR. MEDLEY: Okay. Well, again, I'm a  
21       supervisor. I work for the state. I am a supervisor, so  
22       certainly our policy says report injuries. As a  
23       supervisor, if one of my employees reports an injury,  
24       they're supposed to, like, report it to me. And I, as a  
25       supervisor, I have a form to fill out to explain how the

1 injury happened and did the employee need medical  
2 treatment and stuff like that.

3       It's very rare. As an office worker, we don't  
4 injure ourselves very often. I did have, you know,  
5 probably once or twice over the years fill out a form and  
6 would have talked to the employee to get the facts of how  
7 they hurt themselves and write up the supervisor's side of  
8 the story or whatever. And you're supposed to recommend,  
9 could anything have been done to prevent it or minimize  
10 the jury or whatever. It's not a lot. Probably most  
11 places have that. But as a supervisor, I would carry out  
12 that role.

13       THE COURT: And other than filling out the form  
14 and getting the facts to fill out form, were there any  
15 other aspects of investigation that you were involved in?

16       MR. MEDLEY: No. I'm not like an overall  
17 trainer on safety or anything that. Just, you know, if  
18 one of my employees hurt themselves, you know, report it to  
19 your supervisor, you know, when you have that injury.

20       THE COURT: All right. Let's pass the  
21 microphone back to Ms. Pritchett and she'll -- I think  
22 you had your hand up; is that right?

23       MS. PRITCHETT: Yes.

24       THE COURT: Okay.

25       MS. PRITCHETT: I was responsible for -- if one



1 of my employees, if they received a needle stick, there  
2 was an exchange of bodily fluids or anything like that,  
3 that was to be reported to me and then I reported it to  
4 the next person up.

5 THE COURT: All right. And did you report that  
6 by filling out a form like Mr. Medley described?

7 MS. PRITCHETT: Completing a form, right.

8 THE COURT: Yeah. Were you otherwise involved  
9 in the investigation of the injuries?

10 MS. PRITCHETT: Yes.

11 THE COURT: Okay. And how were you involved  
12 otherwise in the injury? Other than filling out the  
13 form, did you get involved otherwise in the  
14 investigation, and how so?

15 MR. THOMPSON: Just as far as the timeliness of  
16 it, when did the incident occur, what occurred, when and  
17 under what circumstances.

18 THE COURT: Very good. Ms. Larson.

19 MS. LARSON: As a teacher, if a student is  
20 injured under my supervision, I have to fill out a form  
21 and contact the parents of what took place.

22 THE COURT: Okay. Good. And other than filling  
23 out the form, were you otherwise involved in any  
24 investigation of the injury?

25 MS. LARSON: Usually called into the office and

1 questioned.

2 THE COURT: Okay. And who would do the  
3 questioning?

4 MS. LARSON: The principal.

5 THE COURT: Very good. Okay. Any other hands?  
6 I think there was one here. Ms. Burmeister.

7 MS. BURMEISTER: As village clerk-treasurer, I  
8 was responsible for the insurance, including the workers'  
9 comp insurance. So there were at least a couple workers'  
10 comp forms that I had to provide workers when they were  
11 injured. And there was one, the director of public  
12 works, that had filed a workers' comp claim that went  
13 to -- they asked me to go along with the village  
14 president for a workers' comp hearing. But it was  
15 settled before we actually went through the hearing.

16 THE COURT: Okay. And was that an ordinary -- I  
17 got the impression from the way you told the story that  
18 that was a one-time event. Was it part of your normal  
19 interaction to accompany the village president to a  
20 workers' compensation hearing?

21 MS. BURMEISTER: Well, the Village of Wyocena is  
22 very little. It's, like, 800. And so we just had --  
23 that's the only workers' comp claim that they ever -- you  
24 know, that went to the claim -- but I was responsible for  
25 keeping a record of time and doing the payroll.

1 THE COURT: I see. Okay. All right. Thank  
2 you. Were there other affirmative responses on the  
3 question of your involvement in reporting workplace  
4 injuries? Mr. Thruman.

5 MR. THRUMAN: Well, about a year ago there was a  
6 workman's comp injury to one of my staff. It actually  
7 had happened at East High School before I got to East. I  
8 was at West. But during the investigation the attorneys  
9 came out to the school.

10 This employee hurt his shoulder on a cafeteria  
11 table. And all parties involved in the suit, you know,  
12 wanted to go over, you know, how the injury happened,  
13 why. And they wanted me to be present at this meeting  
14 and have my input; ask me questions of what my opinion  
15 was, which was that there was a defect of the table  
16 because they didn't all work the same. There was, like,  
17 a hinge and a bar in the center of the table and these  
18 tables got locked into position. You're supposed to be  
19 able to just take this bar and it unlocks the table so  
20 you can fold it up and lift it.

21 Well, they did all kinds of measurements and stuff.  
22 And it was my opinion that, you know, the welds were off  
23 of the table, which caused this not to operate like the  
24 other ones. And so I was just involved of, you know,  
25 bringing those aspects out, you know. But I wasn't

1 really in charge of the investigation as far as that  
2 goes.

3 THE COURT: Good. Thank you. You can just hold  
4 onto the mike and we'll get it to the next place it has  
5 to be. Actually, you might as well pass that down to the  
6 court security officer for the moment because the next  
7 question might require somebody to come over here at side  
8 bar.

9 I know some of you have been members of unions, so I  
10 have a couple questions about unions. We'll just do --  
11 this one we can just do by a show of hands. How many of  
12 you have been a member of a union in your workplace?  
13 Raise your hand and I will just make a record here of  
14 this. And so this is Mr. Fronek, Ms. Burmeister,  
15 Mr. Rajani, Mr. Thruman, Mr. Medley and Mr. Hernandez.  
16 Okay.

17 And how many of you are currently members of unions  
18 in your workplace? Mr. Thruman. Okay.

19 Same question, but now I'm going to expand it a  
20 little bit to close friends or family members. How many  
21 of you have close friends or family members who are now  
22 members of unions? Okay. And I'll just make a record  
23 here. We have Mr. Bartzen, Ms. Beth, Ms. Burmeister,  
24 Mr. Viken, Mr. Thruman, Mr. Medley and Mr. Hernandez.  
25 Okay.

1           Now the question is whether you or any of your close  
2 friends and family members have filed a union grievance.  
3 And if you have a "yes" answer here, I'm going to take  
4 your response -- I'll make a record that you said "yes,"  
5 but then we're going to hear the story over here at side  
6 bar. So have you or a close friend or family member  
7 filed a grievance through your union? Okay.

8 Mr. Thruman.

9           MR. THRUMAN: I have, but I don't remember what  
10 it was for.

11           THE COURT: Okay. All right. And Mr. Medley.

12           MR. MEDLEY: Well --

13           THE COURT: And again, I want the details over  
14 here at side bar. But if you need a clarification about  
15 whether we need to come over to side bar, we can maybe do  
16 that here.

17           MR. MEDLEY: Well, it was not for myself. My  
18 wife was a teacher and was a union member as a teacher  
19 and I believe she did file a grievance at some time. I  
20 don't -- I'm not sure I remember a lot of the details of  
21 what it was.

22           THE COURT: Okay. So, well, let me put it to  
23 you this way: Do you remember any of the details? And  
24 don't tell me what they are. I just want to know whether  
25 we should take a minute. It just takes a second to go

1 over here to the side to find out what you remember about  
2 it.

3 MR. MEDLEY: It was several years ago. I don't  
4 remember a lot of details. I don't remember.

5 THE COURT: All right. We'll let that one go.  
6 All right.

7 MR. MORGAN: Your Honor, Ms. Burmeister.

8 THE COURT: Ms. Burmeister, yes.

9 MS. BURMEISTER: He mentioned a spouse. My  
10 spouse was the plant manager at Martin Marietta sand  
11 plant. He was involved in some grievance, but I don't  
12 know the details.

13 THE COURT: Okay. All right. So I think that's  
14 a sufficient answer. Counsel may tell me differently.  
15 If they do, then we'll decide. Okay.

16 So next question: Have you ever filed a lawsuit, an  
17 administrative charge or any other form of complaint  
18 against an employer? And again, this is a "yes." Raise  
19 your hand if the answer is "yes" and then we'll get the  
20 details over here at side bar.

21 So again, this is about you. Have you ever filed a  
22 lawsuit, an administrative charge or any other form of  
23 complaint against an employer? Raise your hand if the  
24 answer is "yes" and we'll get the details over at the  
25 side. Okay.

1 Same question, now expanding it out to close friends  
2 or family members: ever file a lawsuit, administrative  
3 charge or any other form of complaint against an  
4 employer? Okay.

5 Have you or a close friend or family member ever  
6 been fired, suspended or laid off by an employer? And  
7 again if the answer is "yes" we'll get the details over  
8 here at the side. So have you or a close friend or  
9 family member ever been fired, suspended or laid off by  
10 an employer?

11 Okay. And so we've got Mr. Fronek, Mr. Medley,  
12 Mr. Rajani and Mr. Hernandez. Okay. And going to side  
13 bar is really for your courtesy. So, Mr. Fronek, would  
14 you like to discuss this at side bar or do you want to  
15 lay it all out here?

16 MR. FRONEK: It's fine. It was a company  
17 downsizing. A company I worked for had downsized. And  
18 so when they eliminated our division, all the employees  
19 were let go.

20 THE COURT: All right. Very good. Mr. Rajani,  
21 same: do not hesitate to come over to side bar if you  
22 don't want to then years about it. But if it's a  
23 downsizing and you don't care, we can do it efficiently  
24 this way. But if you want to come to side bar, come on.

25 MR. RAJANI: Yes, pretty much the same thing.

1 THE COURT: Same thing, downsizing?

2 MR. RAJANI: Yes, cuts.

3 THE COURT: Okay. Mr. Medley, same offer to  
4 you: we can do it over here or you can --

5 MR. MEDLEY: We can do it over there I guess.

6 THE COURT: Okay. I'll will take one attorney  
7 from each side.

8 (At side bar.)

9 THE COURT: Can you hear, Cheryl? Tell us  
10 your story. Stand up close to the microphone and tell  
11 us --

12 MR. MEDLEY: Oh, I see, she's listening.

13 THE COURT: We have a completely sophisticated  
14 system for doing this.

15 MR. MEDLEY: Okay. Thank you. This is about I  
16 think 30 years ago I was sort of the accountant at a food  
17 co-op in Milwaukee and had some differences of opinion  
18 with the general manager that we didn't get resolved.  
19 And so basically I got fired over I guess matters of  
20 management opinions or attitudes about management policy.  
21 And I was happy, say, later on that the manager was fired  
22 and I was rehired to work at the same place again. But I  
23 did have that experience and it was certainly not fun,  
24 you know.

25 THE COURT: So how long were you in the fired



1 and not-yet-rehired status?

2 MR. MEDLEY: Probably six to nine months or  
3 something like that.

4 THE COURT: Okay.

5 MR. MEDLEY: Again, this was about 30 years ago  
6 and so I apologize, the dates are not too fresh in my  
7 mind.

8 THE COURT: That's all right. And did you raise  
9 any objection or complaint to the firing?

10 MR. MEDLEY: Well, I mean, no. I mean, they  
11 have the right to fire people who you want to fire, you  
12 know.

13 THE COURT: Yeah.

14 MR. MEDLEY: So I had no basis to file an appeal  
15 or anything like that.

16 THE COURT: Yeah. Okay. Any follow-up from  
17 counsel?

18 MR. MORGAN: No.

19 MR. DOUGLAS: No, Your Honor.

20 THE COURT: Okay. Thank you, very much.

21 MR. MEDLEY: Okay. Thank you.

22 (End side bar.)

23 THE COURT: All right. That's how it's done.  
24 So it's not very difficult or painful, so don't be shy.  
25 Now we're down to the last person that I noted. So,

1 Mr. Hernandez, do you want to go to side bar?

2 MR. HERNANDEZ: No. My father was a manager at  
3 a steel plant and his division was eliminated, too, due  
4 to downsizing.

5 THE COURT: Very good. Thank you. Are there  
6 any other? I want to make sure I didn't miss anybody on  
7 fired or suspended or laid off by an employer. Okay.  
8 Very good.

9 Next question is have you or has anyone close to you  
10 ever been subjected to any form of discrimination or  
11 retaliation in the workplace? Discrimination or  
12 retaliation in the workplace. And we can follow up at  
13 side bar if need be. Ms. Burmeister.

14 MS. BURMEISTER: Well, it would be my husband.

15 THE COURT: Let me have you take the microphone  
16 so we can hear you.

17 MS. BURMEISTER: And it could apply to the last  
18 question. I mean, there was a meeting of minds that he  
19 left Unimin.

20 THE COURT: Why don't we go side bar and you can  
21 tell us the details of this one.

22 (At side bar.)

23 THE COURT: Go ahead. Then years right into  
24 that microphone.

25 MS. BURMEISTER: Okay. My husband started

1 working for Martin Marietta in the Sand Division and that  
2 was bought out by Unimin. Their style of management was  
3 very different than what he had been trained in as Martin  
4 Marietta. It was the very last Martin Marietta plant  
5 manager that was still working. And their philosophy was  
6 money was the main thing, where Martin Marietta was a  
7 little more you had to keep your employees happy.

8 And so he didn't often agree with Unimin and so they  
9 came to an agreement. It was a severance package that we  
10 had. Actually, my boss, the one that owned my law firm,  
11 looked over the agreement. And he had to agree not to  
12 work for a sand plant and got a generous severance  
13 package. But he did not agree with how the company  
14 managed the plant.

15 THE COURT: Okay. And he reached an agreement  
16 to leave, so I gather he didn't make any complaint or --

17 MS. BURMEISTER: No.

18 THE COURT: All right.

19 MS. BURMEISTER: He signed the agreement and he  
20 hasn't worked for a sand plant.

21 THE COURT: Okay. Very good. Any follow-up?

22 MR. MORGAN: Just one quick question: Was he  
23 told -- what prompted the separation? Was he told he was  
24 going to be let go or was it just a mutual parting of  
25 ways?

1 MS. BURMEISTER: Well, basically, like I said --  
2 I wasn't there, so I don't know -- he obviously had good  
3 performance. And basically all of a sudden -- basically  
4 they went to hiring mining engineers for plant managers.  
5 He was the last one that wasn't a mining engineer.

6 MR. MORGAN: Okay.

7 THE COURT: And that question was from  
8 plaintiff's counsel. Anything for the defense?

9 MR. DOUGLAS: No.

10 THE COURT: Thank you, very much.

11 (End of side bar.)

12 THE COURT: Okay. The next question: Have you  
13 or anyone close to you ever been accused of retaliating  
14 against someone? This is a question kind of similar to  
15 the last, but this is whether you have been accused of  
16 retaliation.

17 Have you or anyone close to you sued, been sued or  
18 participated in a lawsuit based upon the Federal Railway  
19 Safety Act or any other employment laws? I'm going to  
20 read that one again because there are many other  
21 employment laws besides the Federal Railway Safety Act.  
22 But the question is whether you or anyone close to you  
23 has sued, been sued or participated in a lawsuit based  
24 upon employment loss. Okay. We have affirmative answers  
25 from Ms. Burmeister, Mr. Cegelski and, Mr. Medley, are

1 you in or out?

2 MR. MEDLEY: I'll tell my story, sure.

3 THE COURT: Okay. So, Ms. Burmeister, we just  
4 had a side bar regarding your husband's experience. Is  
5 this a different experience than that?

6 MS. BURMEISTER: It's different.

7 THE COURT: Okay. Why don't we go side bar and  
8 find out the details.

9 (At side bar.)

10 THE COURT: Go ahead.

11 MS. BURMEISTER: This was my spouse. But at his  
12 last job as Director of Buildings and Grounds for the  
13 school district, and it was -- there was a lawsuit  
14 against the school that he had because it was on the  
15 contract for plowing the grounds, the parking lots and  
16 that, so he had to be a witness. And it was settled, but  
17 it was against the school district. But as the Director  
18 of Public Works, Buildings and Grounds, he had to be part  
19 of it.

20 THE COURT: Okay. So he was a witness in the  
21 suit against the district?

22 MS. BURMEISTER: Right.

23 THE COURT: Okay. Very good.

24 MR. MORGAN: I don't have any questions, Judge.

25 MR. DOUGLAS: No.

1 THE COURT: Okay. Thank you.

2 (End of side bar.)

3 THE COURT: Okay. So who else had "yes" answers  
4 for participations in lawsuits? Mr. Cegelski and  
5 Mr. Medley. Let's take -- oh, and Mr. Bartzen as well.

6 MR. BARTZEN: Just a question for Your Honor.

7 THE COURT: Sure.

8 MR. BARTZEN: I'm assuming when you ask the  
9 question you mean me personally or someone related to me,  
10 not as part of my job?

11 THE COURT: Correct. Yes. Okay. So  
12 Mr. Cegelski -- also, Ms. Burmeister's response suggests  
13 an efficient way to handle some of this. If the  
14 participation that you're thinking of in response to this  
15 question about participating in lawsuits was that the  
16 person that you knew was a witness, we probably can  
17 handle that without going side bar. But if you are -- if  
18 this person were either the target of the suit or the  
19 plaintiff in the suit, that's probably appropriate to do  
20 side bar.

21 So, Mr. Cegelski, shall we come over?

22 (At side bar.)

23 THE COURT: Go ahead, Mr. Cegelski.

24 MR. CEGELSKI: So it's about 20 years ago I was  
25 a branch manager at Baraboo Federal Bank in Sauk City and

1 I had to fire our head teller for a variety of reasons.  
2 But she in turn sued us, sued the bank, for sexual  
3 discrimination. So we had a lot of depositions we had to  
4 prepare. It was -- probably lasted over a year. I can't  
5 recall if it actually went to trial, but there was  
6 some -- I don't know if it went to arbitration. I think  
7 it went to arbitration. But it was decided there was a  
8 small settlement paid and that was kind of the end of it.

9 THE COURT: Okay. And so part of the basis for  
10 her lawsuit were the decisions that you made?

11 MR. CEGELSKI: Correct. I was the branch  
12 manager. I was the one who actually fired her. So  
13 she -- you know, part of it was that I had sexually  
14 discriminated against her in the workplace.

15 THE COURT: Okay. And so were you named as a  
16 defendant in that suit?

17 MR. CEGELSKI: I can't recall if I was or if it  
18 was just the bank and I was named. I don't -- I never  
19 had to get my own counsel.

20 THE COURT: Mm-mm. But you were one of the  
21 persons who she alleged had discriminated?

22 MR. CEGELSKI: Yes. Correct.

23 MR. MORGAN: Were you deposed?

24 MR. CEGELSKI: Yes.

25 MR. MORGAN: Did you give a deposition?

1 MR. CEGELSKI: Yes.

2 MR. MORGAN: Does that experience -- do you  
3 think that affects your ability to be fair and impartial  
4 in this case?

5 MR. CEGELSKI: I've been deposed multiple times  
6 since then. I'm a commercial real estate lender. So not  
7 actual lawsuits, but, you know, directed at -- so would  
8 that affect my ability to fairly judge? I don't think  
9 so. I mean, what I do work related is different I think  
10 than here.

11 MR. MORGAN: Okay.

12 THE COURT: Any other follow-up?

13 MR. DOUGLAS: Nothing, Your Honor.

14 THE COURT: Okay. Thank you, Mr. Cegelski.

15 (End of side bar.)

16 THE COURT: Was it Mr. Medley who also had an  
17 answer? I think you're it.

18 MR. MEDLEY: Yeah. Where's the mike?

19 THE COURT: We're going to take you to side bar  
20 unless you --

21 MR. MEDLEY: I can then talk with the mike.

22 THE COURT: Let me stop you before you do that.  
23 This one is not just for your own privacy, but it's also  
24 because if you have had an experience involving a  
25 dispute, I'd rather not have the rest of the jury hear



1 about it. So why don't we do this one at side bar.

2 (At side bar.)

3 THE COURT: All right. Mr. Medley.

4 MR. MEDLEY: Sure. Okay. This relates to my  
5 wife was a teacher in the Middleton school system. She  
6 was an officer in the teacher's union several years ago.  
7 And there was an event that got some local publicity.  
8 Some e-mails were shared among some teachers that  
9 allegedly were improper. And when the administration  
10 discovered the e-mails, they took disciplinary actions  
11 against several of the teachers or other administrators  
12 who were sharing e-mails with each other.

13 And the union, which my wife was one of the officers  
14 of the union, alleged that the levels of discipline among  
15 the different teachers were improper, you know, were not  
16 fair, reasonable or appropriate. And the union -- one  
17 teacher was suspended and the union had lengthy  
18 negotiations and arbitration with the School Board over  
19 that teacher's situation. And again, I certainly don't  
20 know all the details of it. But after a couple of years  
21 the teacher was reinstated and did return to work. But  
22 there was -- you know, in the local media there was some  
23 discussion or news about it.

24 So my wife was not a witness or was not directly at  
25 the bargaining table. But as a member of her union,

1 she -- you know, it was a major event for her union over  
2 this couple-year period. And so the issue I think was  
3 more the fair, appropriate and reasonable management  
4 actions or treating workers appropriately based on the  
5 actions -- based on the content of the e-mails. And I  
6 don't know all the details of how the -- I'm sure there's  
7 plenty of news media you can find on that if you wish to.

8 THE COURT: But just to make the record  
9 abundantly clear, your wife was not a complainant?

10 MR. MEDLEY: No, she was not a complainant. She  
11 was not a participant in the e-mail. She was a board  
12 member of the union and it was a major issue for the  
13 union -- for union-management relations at her school  
14 over a couple of -- it took a couple years to resolve the  
15 issue.

16 MR. MORGAN: So there was a grievance filed?

17 MR. MEDLEY: I assume so. I mean, the school  
18 administration took action against a number of the  
19 teachers, including one teacher who I guess was either  
20 fired -- or was fired. And the union advocated on behalf  
21 of that person to say that the level of discipline was  
22 not appropriate or not treating the class of people in a  
23 similar, fair way. The one person, the union said, was  
24 being singled out for more negative treatment than other  
25 people.

1 I don't know all the particular facts of the -- how  
2 many e-mails. These were allegedly, like, adult content  
3 e-mails that were shared on the -- with other adults on  
4 the state -- on the school's e-mail system.

5 THE COURT: Has that experience left you with  
6 any preconceptions about how discipline is delivered to  
7 union members?

8 MR. MEDLEY: Any pre -- well, I guess I'd say I  
9 think everything is, you know, case by case or facts and  
10 circumstances. I mean, you know, I'm not sure what you  
11 mean by "preconception."

12 THE COURT: Well, does that experience make it  
13 difficult for you to be fair in this case and judge this  
14 case on the basis of the evidence that's presented in the  
15 courtroom?

16 MR. MEDLEY: I don't think so. I was just  
17 recounting that, you know, again, in my wife's case, she  
18 had a case of that nature and I was just sharing that  
19 that happened.

20 THE COURT: Good. Thank you.

21 MR. MORGAN: Thank, you, Mr. Medley.

22 (End of side bar.)

23 THE COURT: Okay. Because it's an important  
24 question, I want to make sure that I don't overlook  
25 anyone that had an answer to that. The question was

1 about whether you or anyone close to you had sued, been  
2 sued or participated in a lawsuit based on employment  
3 loss. Okay. Good.

4 Do any of you have an opinion about -- let me phrase  
5 it this way: Do any of you have a strong opinion about  
6 BNSF or railroads in general, whether favorable or  
7 unfavorable?

8 Do any of you have a favorable or unfavorable view  
9 of corporations in general?

10 Would each of you -- and this is a question I'm  
11 going to set it by context. If you found that the  
12 evidence was in favor of a party who was bringing a  
13 lawsuit against a corporation, would you be able to find  
14 in favor of that party? Would you be able to find in  
15 favor of a party that was suing a corporation?

16 Any of you -- would any of you -- let's put it this  
17 way so you -- I would expect fewer hands raised: Would  
18 any of you be unable to find in favor of Mr. Koziara?

19 Start again. Would you be able -- any of you that  
20 wouldn't be able to find in favor of the party that was  
21 suing a corporation if the evidence supported a verdict  
22 in their favor? The question gets to whether you're so  
23 in favor of corporations that you just can't manage the  
24 thought of finding in favor of somebody who is suing a  
25 corporation.

1 Have any of you ever been disciplined for workplace  
2 conduct? This is another question that we'll follow up  
3 at side bar. And again some of the subjects -- some of  
4 the answers here that you would say "yes" to this  
5 question about whether you've been disciplined you may  
6 have discussed already. So if that's the case, we don't  
7 need to go over it again. But have any of you ever been  
8 disciplined for workplace conduct? Okay. Good.

9 Have any of you spent time in or around La Crosse,  
10 Wisconsin? The events in this case happened near  
11 La Crosse. So I want to find out if you have spent time  
12 in or around La Crosse, Wisconsin.

13 The good news is that, Ms. Larson, we don't have to  
14 go side bar to hear your answer. I suppose it depends on  
15 what you were doing in La Crosse, Wisconsin. But unless  
16 you ask, we'll have your answer in open court.  
17 Ms. Larson, tell us about your experiences in La Crosse.

18 MS. LARSON: I go shopping in La Crosse every  
19 year the day after Thanksgiving.

20 THE COURT: Our Black Friday sales aren't good  
21 enough for you?

22 MS. LARSON: Relatives within 50 miles of there.

23 THE COURT: Very good. And what are the  
24 relatives, how close are they: your parents, family?

25 MS. LARSON: My parents, my sister, brother,

1 sister-in-law.

2 THE COURT: Very good. Who else has a  
3 connection to La Crosse, Wisconsin? Let's go right down  
4 the row to Mr. Fronek.

5 MR. FRONEK: My wife and I spent some time  
6 vacationing there because we bike and do tourist types of  
7 things. We just spent time there vacationing.

8 THE COURT: Okay. Very good. All right. Let's  
9 go down to the front row. Anybody else spent time in  
10 La Crosse, Wisconsin?

11 MR. HERNANDEZ: Just vacationing.

12 THE COURT: That was Mr. Hernandez who vacations  
13 in La Crosse. Ms. Burmeister.

14 MS. BURMEISTER: We've also biked the bicycle  
15 trails there. But vacation there, that's basically all.

16 THE COURT: Anybody else in the front row?  
17 Okay. This is a more general question about your --  
18 whoops. I don't want to overlook somebody.  
19 Mr. Cegelski.

20 MR. CEGELSKI: Just my son was in drum corps and  
21 he had multiple shows at La Crosse and also some camping  
22 and vacationing in the area.

23 THE COURT: Okay. Very good. This is another  
24 kind of general disposition question: Do any of you  
25 think there are simply too many lawsuits or too many

1 lawyers? I'm going to assume that Mr. Bartzen thinks  
2 there are too many lawyers. Other than that, too many  
3 lawsuits or too many lawyers. Anybody that has a general  
4 view that we're just too litigious and we go to court too  
5 often? Okay.

6 Here are some questions about your litigation  
7 experience and opinions. First of all, I want to ask, do  
8 any of you have difficulty reading, hearing or  
9 understanding the English language? That certainly  
10 doesn't seem to be so far.

11 I know Mr. Bartzen will say "yes" to this. But the  
12 question is, have you ever studied law or worked in a law  
13 office? And I know that we've already gotten -- we've  
14 got Ms. Burmeister's experience, Mr. Bartzen's  
15 experience. Anybody else that has studied law or worked  
16 in a law office?

17 THE COURT: Mr. Medley.

18 MR. MEDLEY: I was going to say, I took a couple  
19 courses in business law as a business major, but that's  
20 not -- compare it to what people do in law school.

21 THE COURT: I understand, but I appreciate the  
22 answer. So, yes, you've had some courses in business  
23 law. Okay. Did those cover any of the legal areas that  
24 are close to those at issue in this lawsuit, like  
25 employment law, antidiscrimination laws?

1 MR. MEDLEY: Not that I remember. I mean, it  
2 was, like, 40 years ago.

3 THE COURT: All right. It won't be on the test.  
4 That's all right. Okay. We've spoken about certain  
5 kinds of lawsuits already and so I've asked whether  
6 you've been involved in lawsuits involving employment  
7 laws. But have any of you otherwise been involved in a  
8 lawsuit as a plaintiff or a defendant? Again, any kind  
9 of lawsuit at all other than what we've already talked  
10 about in the employment context, but other kinds of  
11 lawsuits: car-wreck cases, all that sort of stuff. Okay.

12 Let's just go down the line. Mr. Bartzen, tell us  
13 about what lawsuits you've been involved in.

14 MR. BARTZEN: I was a witness in a malpractice  
15 claim.

16 THE COURT: Okay. Very good. Ms. Larson.

17 MS. LARSON: Accosted in a restaurant and that  
18 case is still pending.

19 THE COURT: Is that a criminal matter?

20 MS. LARSON: Yes.

21 THE COURT: Okay. So you were the victim of a  
22 criminal case -- of a criminal charge. Okay. And that's  
23 still ongoing. Where is that case pending?

24 MS. LARSON: Here in Madison.

25 THE COURT: Okay. And that would be probably in



1 Dane County Circuit Court?

2 MS. LARSON: Yes.

3 THE COURT: Okay. Very good. Who else has been  
4 involved in a lawsuit? Let's go -- we'll do it in order,  
5 so Mr. Castillo.

6 MR. CASTILLO: A car accident. He wanted I  
7 guess to get more money than my insurance company was  
8 going to give them. So he went toward -- after me  
9 instead of my insurance company. But my insurance  
10 company got involved in that and I didn't have to do  
11 anything about it.

12 THE COURT: Okay. But there was a lawsuit  
13 filed?

14 MR. CASTILLO: Yes.

15 THE COURT: Did it go to trial?

16 MR. CASTILLO: No, it didn't.

17 THE COURT: Okay. And the insurance company  
18 made a settlement with them?

19 MR. CASTILLO: Mm-mm.

20 THE COURT: Okay. Very good. Who else has been  
21 involved in a lawsuit? Ms. Beth.

22 MS. BETH: Earnest money. I was selling a house  
23 and people put earnest money down and wanted the house.  
24 And just about two days before actual closing, they said,  
25 "Could we just skip it? Could I just have my money

1 back?"

2 "No, you can't."

3 And they sued for the money and, you know, that kind  
4 of thing, so civil lawsuit.

5 THE COURT: All right. And did that get  
6 resolved by trial or was there a settlement involved?

7 MS. BETH: In front of a judge, yeah.

8 THE COURT: Okay. And what was the result?

9 MS. BETH: I got to keep the money.

10 THE COURT: Okay. Good for you. All right.  
11 Anybody else? Okay. Down into the front row then.  
12 Mr. Cegelski has his hand moving. Okay. Mr. Cegelski,  
13 you were involved in a lawsuit?

14 MR. CEGELSKI: I have been involved in multiple  
15 depositions related to my job, which is I'm in the  
16 commercial real estate lending business and have been for  
17 quite some time. So I've been deposed, I don't know,  
18 probably six or eight times related to three or four  
19 different problem loans, if you will.

20 THE COURT: Mm-mm. All right. And those would  
21 be -- are those suits brought on behalf of your employer  
22 against borrowers?

23 MR. CEGELSKI: There would be suits that way,  
24 also, suits from borrowers against our employer.

25 THE COURT: Okay. Very good. Mr. Medley.

1 MR. MEDLEY: I have two cases. When I was,  
2 like, eight years old I was in a pedestrian-auto  
3 accident. I was a pedestrian. And I was, you know, a  
4 child at the time. But there was litigation and we did  
5 receive a modest award for my medical injuries back in  
6 the early 1960s.

7 Secondly, in terms of my current job, we did have a  
8 contested administrative hearing about a year ago with an  
9 action our office was taking with regard to one of the  
10 insurance companies and I was deposed. We had about a  
11 five-day administrative hearing within our office. So  
12 that was, yes, I was cross-examined and things by the  
13 attorneys on both sides.

14 THE COURT: Okay. Very good. Mr. Hernandez.

15 MR. HERNANDEZ: Yeah. I don't know how relevant  
16 this is, but when I was in college I was a member of the  
17 Student Judiciary of the Association of Students of  
18 Madison and was on panels and *en banc* hearings for  
19 various cases that came up. And there were cases or one  
20 case in particular that came up through the Circuit  
21 Court. So that's the degree to which I've been involved  
22 in cases in the past.

23 THE COURT: And so what kind of cases did the  
24 Student Judiciary hear?

25 MR. HERNANDEZ: Mostly dealing with funding

1 disputes related to allocation of funds, segregated fee  
2 funds, by the University of Wisconsin to various student  
3 organizations on campus.

4 THE COURT: And then you said one of those ended  
5 up going into -- beyond the Student Judiciary, actually  
6 got into --

7 MR. HERNANDEZ: Federal court.

8 THE COURT: -- federal court?

9 MR. HERNANDEZ: Correct.

10 THE COURT: Okay. Do you remember what case  
11 that was?

12 MR. HERNANDEZ: It was a *Roman Catholic*  
13 *Foundation v. the University of Wisconsin*.

14 THE COURT: Okay. And that was a dispute over  
15 funding something that was arguably a religious activity?

16 MR. HERNANDEZ: Correct.

17 THE COURT: Okay. Very good. Ms. Burmeister.

18 MS. BURMEISTER: I don't know if this applies,  
19 but I helped my parents because there was a lawsuit  
20 brought against my father after he had had a stroke and my  
21 mother was having memory problems which later was shown  
22 to be stroke dementia. And there was a lawsuit brought  
23 against my father, as the insurance agent for a bar owner  
24 who did not have workers' comp and should have gotten it  
25 from my father.

1 THE COURT: I see. Okay. And so did that case  
2 go to trial?

3 MS. BURMEISTER: No. There was a settlement.

4 THE COURT: Okay. Some of you have included the  
5 responses to this next question in your answers already.  
6 So if we've already heard details, you don't need to  
7 answer again. But other than what you've already told  
8 us, have you or a close friend or family member ever been  
9 a witness in a lawsuit? I know Mr. Cegelski told us  
10 about his testimony as a witness. Any others of you ever  
11 been a witness in a lawsuit?

12 All right. Good. And I think we've already got a  
13 lot of these answers, too, but I just want to make sure  
14 for the sake of completeness: Have any of -- have you  
15 had a close friend or family member that has sued or been  
16 sued by anyone? Again, this isn't just limited to the  
17 employment context. But have a close friend or family  
18 member ever sued or been sued by someone? And again, if  
19 you've already told us the story, we've already got it.  
20 So, Mr. Hernandez, yes.

21 MR. HERNANDEZ: My father sued a trucking  
22 company. There was an accident that he alleged they were  
23 at fault for and there was a settlement involved.

24 THE COURT: Okay. Very good. Thank you. And  
25 again, this is again we've heard a lot of this, including

1 Mr. Hernandez's answer here, but have you or a close  
2 family member ever filed a claim for an injury as a  
3 result of an accident? Have you or a close friend or  
4 family member ever filed a claim for an injury as a  
5 result of an accident? Mr. Medley has told us a story  
6 along these lines as well, but any other stories of this  
7 nature? Okay.

8 Have any of you previously served on a jury? All  
9 right. Let's go. Mr. Cegelski.

10 MR. CEGELSKI: I was on a jury when I lived in  
11 Arizona probably 25-plus years ago. It was a car  
12 accident case.

13 THE COURT: And did you find for the plaintiff  
14 or the defendant?

15 MR. CEGELSKI: The finding was it was really a  
16 dollar amount of claims. And my recollection is it was  
17 somewhere in between what they had asked for and what  
18 they were actually awarded.

19 THE COURT: Okay. And did you serve as the  
20 foreman of that jury?

21 MR. CEGELSKI: I did not.

22 THE COURT: Okay. Mr. Medley.

23 MR. MEDLEY: I believe I was on a jury in Dane  
24 County court, again probably 20 or more years ago. I  
25 guess the case had to do with a group of high school kids

1 who allegedly burglarized a house during their lunch hour  
2 or something like that.

3 THE COURT: So it was a criminal matter then?

4 MR. MEDLEY: Right, it was a criminal matter. I  
5 guess the, I don't know, the defendants I think were  
6 still under 18. I don't remember what their ages were.  
7 And I guess in this case we found the one defendant --  
8 the one case that we had we found not guilty.

9 THE COURT: Okay. Good. All right. Thank you.  
10 Anyone else serve on a jury? Okay.

11 All right. At the end of this case I'm going to  
12 give you some instructions that will govern your  
13 deliberations and your decision. You're required to  
14 follow these instructions even if you do not agree with  
15 them. Is there any one of you who would be unable or  
16 unwilling to following my instructions at the end of the  
17 case?

18 And the last question is, do any of you know any  
19 reason whatsoever why you could not sit as a trial juror  
20 with absolute impartiality to both of the parties in this  
21 case? Okay. Good.

22 All right. I will take one moment and ask one  
23 counsel from each side to join me at side bar.

24 (At side bar.)

25 THE COURT: I just want to give you the chance

1 to ask any follow-up questions on anything that I've  
2 covered so far.

3 MR. MORGAN: We don't have any. I think it's  
4 been pretty thorough.

5 MR. DOUGLAS: It's been thorough.

6 THE COURT: Very good.

7 MR. MORGAN: Your Honor, after we -- I assume we  
8 select the jury now. Can we take a short break after  
9 that?

10 THE COURT: Not only we can, we will have to  
11 because I have to take a plea, two pleas in a criminal  
12 matter, so we'll have a very early lunch today.

13 MR. MORGAN: Okay. Fine.

14 (End of side bar.)

15 THE COURT: Okay. Mr. Wiseman, you can provide  
16 the paperwork to counsel for exercising their peremptory  
17 challenges.

18 Ladies and gentlemen, this process will take a  
19 couple of minutes, so I won't have you leave the room.  
20 After this process is done, very shortly after that we  
21 will be taking our lunch. But for these next few  
22 minutes, if it's more comfortable for you, and you've  
23 been sitting for a couple hours, you want to stand up,  
24 you should feel free to do that.

25 (Peremptory challenges exercised at 11:00 a.m. until



1 11:07 a.m.)

2 THE CLERK: The following jurors are excused and  
3 may take a seat at the rear of the courtroom: Jeff  
4 Bartzen, Victoria Larson, Fay Burmeister, William Viken,  
5 Barry Thruman and Todd Cegelski.

6 And the following jurors have been selected: Joann  
7 Pritchett, David Castillo, Deborah Beth, Richard  
8 Fronek -- and if you four could just shift down to the  
9 end -- Hasmuk Rajani -- Mr. Rajani, if you could take the  
10 first seat at the end of the first row -- Peter Medley,  
11 Tracy Thompson and Shaun Hernandez. And if you three  
12 could move to your left -- your right. Excuse me.

13 THE COURT: Very good. Before I say a few  
14 things to our jury, let me thank all of you who  
15 participated in the voir dire and also the members of the  
16 panel who didn't have to step up and submit yourselves to  
17 questioning. It was still a couple hours of your time.  
18 And I want you to know that it is a very greatly  
19 appreciated service to the Court that you came in and  
20 responded to the jury subpoena and participated here this  
21 morning.

22 I'm sorry you won't get the chance to hear the whole  
23 case as a juror, but our courtrooms are open. So if you  
24 want to follow this case and watch as much of it as you  
25 care to, you can do that. But my most important message

1 to you is thank you, very much, for your candor in  
2 answering my questions and for your willingness to  
3 participate here today.

4 So with that, those of you on the other side of the  
5 bar are excused with the Court's thanks.

6 So, Mr. Wiseman, would you like to administer the  
7 oath to our new jurors?

8 THE CLERK: If you would please stand and raise  
9 your right hand.

10 **JURY PANEL, SWORN**

11 THE CLERK: Please be seated.

12 THE COURT: Okay. I have some introductory  
13 instructions that I'm going to give you, but I'm going to  
14 do it after we take our lunch break today. The trial day  
15 is going to run from nine o'clock until 5:30 and we'll  
16 take at least an hour for lunch and you'll have a break  
17 in the morning and a break in the afternoon. And I'm  
18 already kind of testing your endurance here because I've  
19 got another proceeding that I have to attend to over my  
20 lunch hour. I need to do that now, so we're going to  
21 take that break now.

22 When we come back I will give you the more complete  
23 set of instructions on how the trial will be run and what  
24 your duties are. And after I do that, then you'll hear  
25 opening statements from the parties and we'll roll right

1 into the trial itself.

2 I'm going to give you just one very important  
3 instruction now and that is that it's critically  
4 important that we do two things here. One, we need to  
5 decide the case on the basis of the evidence that's  
6 presented in this courtroom. So I'm going to ask you  
7 that you take pains to avoid hearing about this case.

8 Don't do any Internet research. If this case  
9 happens to show up in a newspaper, don't read the  
10 article. Don't even look at the headline if you can  
11 avoid it. I don't think this is going to be necessarily  
12 front-page news. But the activities in federal court  
13 often get some news coverage, so please avoid hearing  
14 about this case.

15 The second thing that we have to do is to make sure  
16 that we keep an open mind and decide this case on the  
17 basis of all of the evidence. The one thing that you all  
18 have in common is that you're serving as jurors in this  
19 case, so naturally what you're most inclined to then  
20 years about is this case.

21 But it's very important that you not do that because  
22 once you express an opinion, it's just naturally human  
23 nature to be reluctant to change that opinion once you've  
24 kind of put it out on the table. And some people, I'm  
25 sure you're all very open-minded and fair people, but

1 once you sort of stake out your territory and say what  
2 you think, then it's hard to back down. And some people  
3 have kind of an oppositional perspective and if you stake  
4 out an opinion they might want to go the other way. So  
5 it really is important.

6 And the only way we can really be fair is to make  
7 sure that you actually don't then years about this case  
8 until you hear all of the evidence and then you sit down  
9 to deliberate. And then your objective really is to  
10 really thoroughly then years about the case and exchange  
11 your views.

12 And so I'm going to ask you to do something that's  
13 difficult, I know, because it's what you have in common.  
14 But then years about the weather; then years about the  
15 Badgers; then years about anything you want except this  
16 case. So with that, avoiding finding out about the case,  
17 don't then years about the case, and we will see you back  
18 here at 12:30. It's a little bit early for lunch today,  
19 but we can manage. Thank you, very much.

20 (Jury out at 11:14 a.m.)

21 THE COURT: Very good. We'll be back here at  
22 12:30. If there's anything you need to take up with the  
23 Court ahead of time, we can do it right at 12:30. I'm  
24 not anticipating that there's anything further. I'll do  
25 the instructions, which will probably take 15 minutes or

1 so, and then we'll roll right into your opening  
2 statements.

3 MR. MORGAN: Very good.

4 THE COURT: We'll see you at 12:30.

5 MR. MORGAN: Thank you, Your Honor.

6 (Recess at 11:14 a.m.)

7 \*\*\*

8 I, CHERYL A. SEEMAN, Certified Realtime and  
9 Merit Reporter, in and for the State of Wisconsin,  
10 certify that the foregoing is a true and accurate record  
11 of the proceedings held on the 2nd day of March, 2015,  
12 before the Honorable James D. Peterson, of the Western  
13 District of Wisconsin, in my presence and reduced to  
14 writing in accordance with my stenographic notes made at  
15 said time and place.  
16 Dated this 9th day of March, 2015.

17

18

/s/

19

Cheryl A. Seeman, RMR, CRR  
Federal Court Reporter

20

21

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